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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,013	12/24/2001	Rosann Kaylor	KCX-461 (15790)	1072
7590 05/15/2009				
John E. Vick, Jr. Dority & Manning, Attorneys at Law, P.A. P.O. Box 1449 Greenville, SC 29602			EXAMINER ALEXANDER, LYLE	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 05/15/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: ROSANN KAYLOR, DIFEI YANG and MICHAEL KNOTTS

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Application No. 10/035,013  
Technology Center 1700

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Mailed: May 15, 2009

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Before ERIC W. HAWTHORNE *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 12, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated November 6, 2008. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification requires somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter” appearing on pages 2-3 of the Appeal Brief filed November 6, 2008, is deficient because it does not separately map independent claim 62 to the specification. In the Appeal Brief the independent claims are mapped to the Pre-Grant Publication, not to the page and line number of the specification, as required. Correction is required.

Furthermore, MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed November 6, 2008, defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a “paper” which corrects the Appeal Brief’s Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any “paper” submitted by Appellant to correct the Appeal Brief;
- 4) for such further action as may be appropriate.

Application No. 10/035,013

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/saw

John E. Vick, Jr.  
Dority & Manning, Attorneys at Law, P.A.  
P.O. Box 1449  
Greenville SC 29602